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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/249,597	02/12/1999	ANDREW P. DOVE	06005/35169	1127

7590 07/25/2006

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EXAMINER

WU, XIAO MIN

ART UNIT	PAPER NUMBER
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2629

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/249,597

Applicant(s)

DOVE ET AL.

Examiner

XIAO M. WU

Art Unit

2629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-72 is/are pending in the application.
- 4a) Of the above claim(s) 31-37, 40, 45, 50, 63 and 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-30, 38, 39, 41-44, 46-49, 51-62, 64, 65 and 67-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 13-30, 38-39, 41-44, 46-49, 51-62, 64-65, 67-72 are rejected on the ground of

nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S.

Patent No. 6,806,847. Although the conflicting claims are not identical, they are not patentably

distinct from each other because they are claiming similar subject matter. In the following side-

by-side comparison table, the representative claim 38 of the instant application is comparing to

the representative claim 1 of the US Patent No. 6,806,847).

US Patent No. 6,806,847	Instant application: 09/249,597
1. A portable computer for use in a process environment having a process control system including a plurality of process control devices disposed within the process environment externally to the portable computer, the portable computer comprising:	38. A wearable computer for testing a process control system including a plurality of process control devices disposed within a process and external to the to the wearable computer,, the wearable computer comprising:

a housing adapted for portable operation;	
a processing unit disposed within the housing;	a processing unit;
a computer readable memory disposed within the housing and coupled to the processing unit;	a computer readable a memory;
a display disposed within the housing and coupled to the processing unit;	an input device adapted to produce an input signal;
an input device that provides an input signal to the processing unit;	a remote communication device that communicates with the process control system; and
a first software routine stored in the computer readable memory and adapted to be executed by the processing unit that processes the input signal, sends a request to the process control system requesting a change to be made with respect to one or more of the plurality of process control devices and provides information pertaining to the process control system generated by the one or more of the plurality of process control devices during operation of the process via the display; and	a software routine run on the processing unit that processes the input signal to develop a change signal indicating a change to be made in a process signal within the process control system and that communicates the change signal to the process control system via the remote communication device to thereby cause a change to be made to the process signal, where the process signal indicates a characteristic of the process during normal operation of the process.
a second software routine stored on the process control system that receives the request from the first software routine and in response to the request generates a command to cause the change with respect to the one or more of the plurality of process control devices.	

From the comparison above, it is noted that claim 38 is broadening from the claim 1 of the US Patent No. 6,806,847 since it deletes the limitation of “a second software routine stored on the process control system that receives the request from the first software routine and in response to the request generates a command to cause the change with respect to the one or more of the plurality of process control devices” as recited in claim 1 of the US Patent No. 6,806,847).

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It would have been obvious to delete the second software from the claim since the wearable computer is functioning without the second software. Furthermore, it is noted that claim 38 requires a remote communication between the wearable computer and the process control system. However, the remote communication is well known in the art such that a person can use a telephone device to communicate with other person remotely from the work site.

Response to Arguments

3. Applicant's arguments with respect to claims 13-30, 38-39, 41-44, 46-49, 51-62, 64-65, 67-72 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to XIAO M. WU whose telephone number is 571-272-7761. The examiner can normally be reached on 6:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RICHARD HJERPE, can be reached on 571-272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 21, 2006



XIAO M. WU
Primary Examiner
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